

REMARKS

In accordance with the Office Action, Claims 13-31 stand rejected. More particularly, the Examiner has rejected Claims 13-31 under 35 U.S.C. §102(e) contending that such claims are anticipated by United States Patent No. 6,747,917 to Jennings et al. (Jennings). Applicant submits that Jennings does not disclose each and every limitation of independent Claims 13, 21 and 27 and therefore such claims are not anticipated by Jennings. For this reason, Applicant respectfully requests withdrawal of such rejection and allowance of Claims 13-31.

The Examiner asserts in paragraph 7 of the Office Action that: “a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.” As noted below, significant structural differences do exist between the claimed invention and the disclosure of Jennings, and therefore the Jennings device is not, in several respects, capable of performing the intended use of the present invention.

Jennings discloses a string of beads that includes at most five different types of beads, namely one bead 102 of a first color representing the first day of menstrual bleeding, six beads 104 of a second color representing the early infertile days, twelve beads 106 of a third color representing fertile days, thirteen beads 108 of the second color representing later infertile days, and an optional bead 110 signifying the end of the menstrual cycle. (See Figs. 1 and 2 and Col. 6, line 28 through Col. 8, line 59 of Jennings). In contrast with Jennings, Claim 13 recites eight differently appearing types of beads, Claim 21 recites nine types of beads that are different in appearance from one another in at least one of color, shape or size, and Claim 27 recites eight types of beads that are different in appearance from one another in at least one of color, shape or size.

Additionally, Claim 21 recites an ovulation prediction kit for determining the day during a fertile phase of the woman’s menstrual cycle when a level of luteinizing hormone released by the woman’s pituitary gland surges and a ninth type of bead positioned on the string to indicate the day when the luteinizing hormone level surges based on a result from the ovulation prediction kit and removed from the string at the end of the woman’s menstrual cycle. The passing reference in the background section of Jennings to the existing use of urinary progesterone metabolite measurements does not disclose the combination of a bead device with

an ovulation prediction kit providing such measurements. There is no mention anywhere in Jennings that Jennings' bead device be combined with an ovulation prediction kit providing such measurements and Jennings does not disclose a type of bead that is specifically associated with the day when the luteinizing hormone level surges based on a result from the ovulation prediction kit.

Further, Claim 27 includes one type of bead associated with the day the woman's menses phase crosses over to the fertile phase of the woman's menstrual cycle that is orientable in at least three different orientations on the string to indicate a result of an observation of the woman's cervical mucus. The disclosure of Jennings provides no such bead that can be oriented on the string in at least three orientations.

Furthermore, Jennings specifically teaches, in the case of the loop form of Jennings' device (FIG. 1) that the ends of the string, cord or wire be "knotted or securely fastened to prevent tampering, such that the beads cannot be removed and the order of the beads is preserved. Preferably, bead 110 surrounds the knot or other fastening." (See Col. 6, lines 54-57). Also, Jennings specifically teaches, in the case of the open-end linear form of Jennings' device (FIG. 2), that the ends of the string, cord or wire be "securely knotted or otherwise fastened at both ends 202, 204 to prevent tampering, such that the beads cannot be removed from chain 200 and the order of the beads is preserved." (See Col. 8, lines 22-26). Thus, Jennings specifically discloses a device that is configured to prevent removal of the beads. This is in contrast with Applicant's invention wherein all of the beads are removed when the woman's menses phase concludes. Applicant's claimed invention is advantageous because it allows for positioning of the beads in desired numbers and orders to accommodate different menstrual cycles instead of moving a rubber band marker along a pre-configured set of beads each day as with the Jennings device. (See Jennings, Col. 7, lines 26-38 and Col. 8, lines 35-46). This difference is particularly notable in that the pre-configured necklace or chain of Jennings may not be appropriate for use by women having menstrual cycles falling outside of regular 26 to 32 day cycles. In fact, Jennings specifically acknowledges this at Col. 7, lines 46-51 and Col. 8, lines 47-59. Further, since all beads are easily removed with Applicant's claimed apparatus, the beads are ready to be used again to provide indications for the woman's next menstrual cycle, but not necessarily in the same order as the previous month thereby accommodating variations in the woman's cycle from month to month.

In view of the noted deficiencies of Jennings as a reference, Jennings does not anticipate Claims 13, 21 and 27 and could not otherwise render the claimed apparatuses obvious in view of Jennings alone or in combination with other references. Since each of independent Claims 13, 21 and 27 are allowable, there is no need to separately address the patentability of the respective claims depending therefrom.

Conclusion:

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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